

CHAPTER NO. 201

SENATE BILL NO. 1588

**By Fowler, Atchley, Burchett, Graves, McNally, Cohen, Leatherwood, Burks, Kurita,
Miller**

Substituted for: House Bill No. 1104

By Boyer, Ford, Sharp, Hagood, Walker, Baird, Buttry, McCord, Dunn, Sargent,
Montgomery,
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AN ACT To amend the Tennessee Consumer Protection Act of 1977, Title 47, Chapter 18, relative to the Tennessee Identity Theft Deterrence Act of 1999.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 47, Chapter 18, is amended by adding the following sections as a new part.

SECTION 2. Short title. This part shall be known and may be cited as the "Tennessee Identity Theft Deterrence Act of 1999".

SECTION 3. Definitions. As used in this part and in the Tennessee Consumer Protection Act, unless the context otherwise requires:

(a) "Ascertainable loss" means an identifiable deprivation, detriment or injury arising from the identity theft or from any unfair, misleading or deceptive act or practice even when the precise amount of the loss is not known. Whenever a violation of this part has occurred, an ascertainable loss shall be presumed to exist.

(b) "Attorney general" means the Office of the Tennessee Attorney General and Reporter.

(c) "Division" means the Division of Consumer Affairs of the Department of Commerce and Insurance.

(d) "Financial document" means any credit card, debit card, check or checking account information or number, savings deposit slip or savings account information or number, or similar financial account or account number, including but not limited to, a money market account, certificates of deposit, or other type of interest generating account with a bank, savings and loan or credit union account, or any other financial institution, mutual fund accounts, 401K accounts, individual retirement accounts, retirement accounts, or other stock account information, savings bond or other bond, credit lines, equity lines or other lines of credit which the possessor of the account has the right to draw against.

(e) "Identity theft" means:

(1) obtaining, possessing, transferring, using or attempting to obtain, possess, transfer or use, for unlawful economic benefit, one or more identification document(s) or personal identification number(s) of another person.

(2) otherwise obtaining, possessing, transferring, using or attempting to obtain, possess, transfer or use, for unlawful economic benefit, one or more financial documents of another person.

(f) "Identification documents" means any card, certificate or document which identifies or purports to identify the bearer of such document, whether or not intended for use as identification, and includes but is not limited to, documents purporting to be a driver license, nondriver identification cards, birth certificates, marriage certificates, divorce certificates, passports, immigration documents, social security cards, employee identification cards, cards issued by the government to provide benefits of any sort, health care benefit cards, or health benefit organization, insurance company or managed care organization cards for the purpose of identifying a person eligible for services.

(g) "Person" means a natural person, consumer, individual, governmental agency, partnership, corporation, trust, estate, incorporated or unincorporated association, and any other legal or commercial entity however organized.

(h) "Personal identification number" means any number that is assigned by the government to identify a particular person, including but not limited to social security number, federal tax payer identification number, Medicaid, Medicare or TennCare number which identifies a particular person eligible for benefits, any number assigned to a person as part of a licensure or registration process, such as a board of professional responsibility number, driver license number and passport number and any number assigned by an insurance company, health maintenance organization, managed care organization or other health benefit organization, for the purposes of identifying a particular person eligible for services.

(i) "Tennessee Consumer Protection Act" means the Tennessee Consumer Protection Act of 1977, as amended, Tennessee Code Annotated § 47-18-101 et seq. and related statutes. Related statutes specifically include any statute that indicates within the law, regulation or rule that a violation of that law, regulation or rule is a violation of the Tennessee Consumer Protection Act of 1977. Without limiting the scope of this definition, related statutes include but are not limited to, the Prize and Promotion Act, Tennessee Code Annotated § 47-18-120 et seq., Health Club Act, Tennessee Code Annotated § 47-18-301 et seq., Buyer's Clubs Act, Tennessee Code Annotated § 47-18-501 et seq., Home Solicitations Sales Act of 1974, Tennessee Code Annotated § 47-18-601 et seq., Tennessee Credit Services Businesses Act, Tennessee Code Annotated § 47-18-1001 et seq., Consumer Telemarketing Protection Act of 1990, Tennessee Code Annotated § 47-18-1501, Unsolicited Telefacsimile Advertising Act, Tennessee Code Annotated § 47-18-1601 et seq., Tennessee Employment Agency Act, Tennessee Code Annotated § 47-18-1701 et seq., and Membership Camping Act, Tennessee Code Annotated § 66-32-301 et seq.

SECTION 4. Prohibited practices. It shall be unlawful for any person to directly or indirectly:

(a) engage in identity theft;

(b) engage in any unfair, deceptive, misleading act or practice for the purpose of directly or indirectly engaging in identity theft.

SECTION 5. Private rights of action. (a) Any party commencing a private action pursuant to this act must provide a copy of the complaint and all other initial pleadings to the division of consumer affairs and upon entry of any judgment, order, decree of the action, shall mail a copy of such judgment, order or decree to the division of consumer affairs within five (5) days of entry of the judgment, order or decree.

(b) A copy of any notice of appeal shall be served by the appellant upon the director of the division, who in the public interest may intervene.

(c) A private action to enforce any liability created under this part may be brought within two (2) years from the date the liability arises, except that where a defendant has concealed the liability to that person, under this part, the action may be brought within two (2) years after discovery by the person of the liability. No action brought by the division shall be subject to the limitation of actions contained herein.

(d) In any private action commenced under this part, if the private party establishes that identity theft was engaged in willfully or knowingly, the court may award three (3) times the actual damages and may provide such other relief as it considers necessary and proper.

(e) The action may be brought in a court of competent jurisdiction in the county where the identity theft or unfair, deceptive or misleading act or practice took place, is taking place, or is about to take place, or in the county in which such person resides, has such person's principal place of business, conducts, transacts, or has transacted business, or, if the person cannot be found in any of the foregoing locations, in the county in which such person can be found.

(f) Without regard to any other remedy or relief to which a person is entitled, anyone affected by a violation of this part may bring an action to obtain a declaratory judgment that the act or practice violates the provisions of this part and to enjoin the person who has violated, is violating, or who is otherwise likely to violate this part; provided that such action shall not be filed once the division has commenced a proceeding pursuant to this act or the Tennessee Consumer Protection Act.

(g) Upon a finding by the court that a provision of this part has been violated, the court may award to the person bringing such action reasonable attorneys' fees and costs.

SECTION 6. Civil Penalties and Remedies. (a) Whenever the division has reason to believe that any person has engaged in, is engaging in, or based upon information received from another law enforcement agency, is about to engage in any act or practice declared unlawful by this act and that proceedings would be in the public interest, the Attorney General and Reporter, at the request of the division, may bring an action in the name of the state against such person to restrain by temporary restraining order, temporary injunction, or permanent injunction the use of such act or practice. Additionally, the state may request an asset freeze or any other appropriate and necessary orders against such person.

(b) The action may be brought in Davidson County chancery or circuit court, in a court of competent jurisdiction in the county where the identity theft, unfair, misleading or deceptive act or practice took place or is about to take place or in the county in which such person resides, has such person's principal place of business, conducts, transacts, or has transacted business, or if the person

cannot be found in any of the foregoing locations, in the county in which such person can be found.

(c) The courts are authorized to issue orders and injunctions to restrain and prevent violations of this act or issue any other necessary or appropriate relief or orders. Such orders and injunctions shall be issued without bond to the State of Tennessee.

(d) Notwithstanding any other provision of law, a violation of this part shall be punishable by a civil penalty of whichever of the following is greater: \$10,000, \$5,000 per day for each day that a person's identity has been assumed or ten (10) times the amount obtained or attempted to be obtained by the person using the identity theft. This civil penalty is supplemental, cumulative and in addition to any other penalties and relief available under the Tennessee Consumer Protection Act or other laws, regulations or rules.

(e) In any successful action commenced under this part, any ascertainable loss that a person has incurred as a result of the identity theft or misleading, deceptive or unfair practices used to engage in identify theft shall be recovered as restitution for each such person. The person shall also be awarded statutory interest on that ascertainable loss.

(f) In any successful action commenced by the division under this part, the court shall also order reimbursement to the division of the reasonable attorneys' fees, costs and expenses of the investigation and prosecution under this part.

(g) No court costs or litigation fees or costs of any sort can be taxed against the state in any action commenced under this act.

(h) Any knowing or willful violation of the terms of an injunction or order issued pursuant to this act in an action commenced by the Attorney General shall be punishable by a civil penalty of not more than five thousand dollars (\$5,000) for each and every violation of the order recoverable by the state, in addition to any other appropriate relief, including but not limited to, contempt sanctions and the awarding of attorneys' fees and costs to the state for any filings relating to violations of any order under this part.

(i) An order or judgment issued as a result of an action commenced by the division shall in no way affect individual rights of action which may exist independent of the recovery of money or property received under such order or judgment. If a particular person receives restitution as a result of an action commenced by the Attorney General, those funds shall act only as a set-off against any award of monies received in the person's private right of action proceedings.

SECTION 7. Violation of Tennessee Consumer Protection Act. (a) A violation of this part constitutes a violation of the Tennessee Consumer Protection Act of 1977, Tennessee Code Annotated § 47-18-101 et seq.

(b) For the purpose of application of the Tennessee Consumer Protection Act, any violation of the provisions of this part shall be construed to constitute an unfair or deceptive act or practice affecting trade or commerce and subject to the penalties and remedies as provided in that act, in addition to the penalties and remedies set forth in this part.

(c) If the division has reason to believe that any person has violated any provision of this act, the Attorney General, at the request of the division, may institute a proceeding under this chapter.

SECTION 8. If any provision of this act or the application thereof to any person or circumstance is held invalid, such invalidity shall not affect other provisions of applications of the act which can be given effect without the invalid provision or application, and to that end the provisions of this act are declared to be severable.

SECTION 9. This act shall take effect upon becoming law, the public welfare requiring it.

PASSED: May 10, 1999


JOHN S. WILDER
SPEAKER OF THE SENATE


JIMMY NAIFEH, SPEAKER
HOUSE OF REPRESENTATIVES

APPROVED this 19th day of May 1999


DON CONQUIST, GOVERNOR